

**S. G. Construction, Inc. ~~and Connecticut Laborers'~~  
Funds a/w Laborers' International Union of  
North America, AFL-CIO. Case 34-CA-5664**

August 26, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint on June 11, 1992, against S. G. Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 23, 1992, the General Counsel filed a Motion for Summary Judgment. On July 24, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 6, 1992, notified the Respondent that unless an answer was received by July 13, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Connecticut corporation with an office and place of business in Waterbury, Con-

necticut, has been engaged as a contractor in the building and construction industry. During the 12-month period ending May 31, 1992, the Respondent performed services valued in excess of \$50,000 for Vinco, Inc. Vinco, Inc., a Connecticut corporation with an office and place of business in Southbury, Connecticut, has been engaged as a general contractor in the building and construction industry. During the 12-month period ending May 31, 1992, Vinco, Inc. received at its Southbury, Connecticut facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About September 2, 1983, the Respondent entered into an "Acceptance of Agreements" whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc., the AGC, and the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc., the CCIA, both effective April 1, 1983, through March 31, 1984, and agreed to be bound to such future agreements unless timely notice was given.

About September 2, 1983, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union and since that date the Union has been recognized as the exclusive bargaining representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which are effective by their terms for the period April 1, 1991, to March 31, 1993.

For the period from September 2, 1983, through March 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

About October 27, 1991, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the AGC and CCIA agreements by failing to make the contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By unilaterally and without the Union's consent, failing to continue in full force and effect all the terms and conditions of the AGC and CCIA agreements, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for health and welfare, pension, training, legal services, and annuity funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with

interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, S. G. Construction, Inc., Waterbury, Connecticut, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Unilaterally and without the consent of the Union, failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreements with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions set forth in its collective-bargaining agreements with the Union.

(b) Make whole unit employees for any loss of earnings or benefits they may have suffered as a result of the Respondent's failure, since on or about October 27, 1991, to continue in full force and effect all the terms and conditions of its collective-bargaining agreements with the Union, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Waterbury, Connecticut, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally and without the consent of the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO cease giving full force and effect to all the terms and conditions of our collective-bargaining agreements with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions set forth in our collective-bargaining agreements with the Union including making all contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

WE WILL make whole our unit employees for our failure to adhere to the terms of the collective-bargaining agreements.

S. G. CONSTRUCTION, INC.